

## Message Text

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SUBJECT: US INSTRUMENT OF RATIFICATION OF NEW TREATY

REF: (A) STATE 181845; (B) MADRID 5585; (C) MADRID 5684;  
(D) MADRID 5713; (E) MADRID 5582

SUMMARY: WITH THE PASSAGE BY THE CORTES' FOREIGN RELATIONS COMMITTEE ON JULY 23 OF A RESOLUTION RESPONDING TO THE SENATE RESOLUTION OF ADVICE AND CONSENT, THE VIABLE ALTERNATIVES FOR DRAFTING OF THE US INSTRUMENT OF RATIFICATION APPEAR TO HAVE EFFECTIVELY NARROWED TO TWO: SIMPLE MENTION OF THE SENATE RESOLUTION BY DATE OR ATTACHMENT OF THE FULL TEXT. END SUMMARY.

1. THE JULY 23 DEBATE ON THE TREATY IN THE FOREIGN AFFAIRS COMMITTEE OF THE CORTES (REFS C&D) PROVIDES A MEASURE OF SPANISH REACTION TO THE DECLARATION CONTAINED IN THE SENATE RESOLUTION OF ADVICE AND CONSENT. THIS WAS CONSISTENT WITH EARLIER ARGUMENTS BY FOREIGN MINISTRY OFFICIALS, INCLUDING THE MINISTER (REF B), AGAINST ANY INCLUSION IN OR ANNEXATION TO THE US INSTRUMENT OF THE TEXT OF THE SENATE DECLARATION, ON THE GROUNDS THAT FOR THE GOS TO ACCEPT SUCH AN INSTRUMENT COULD CREATE AN IMPRESSION OF SPANISH ACQUIESCENCE IN THE SENATE'S LANGUAGE. NOW, WITH THE PASSAGE BY THE CORTES COMMITTEE OF A COMPANION RESOLUTION, OUR INFORMAL SOUNDINGS INDICATE THAT SPANISH AUTHORITIES WOULD ALSO FIND ACCEPTABLE, ALTHOUGH LESS DESIRABLE, AN ARRANGEMENT BY WHICH THE INSTRUMENTS OF RATIFICATION WOULD ANNEX BOTH THE RESPECTIVE PARLIAMENTARY RESOLUTIONS  
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AND THE TREATY.

2. OF THE TWO OPTIONS, THE FIRST, ALONG THE LINES OF OPTION D IN REF A, WOULD HAVE THE CLEAR ADVANTAGE OF BEING LESS POLEMICAL AT A TIME WHEN PERCEPTIONS, WARRANTED OR NOT, OF U.S. INTERFERENCE IN INTERNAL SPANISH AFFAIRS GIVE ARGUMENTS TO THE "BUNKER" (WITNESS THE STIFF ATMOSPHERE IN THE FOREIGN AFFAIRS COMMITTEE OF THE CORTES) AND DO NOT MAKE IT EASIER FOR THOSE HERE WHO SEEK PROGRESS TOWARD DEMOCRATIC INSTITUTIONS TO IDENTIFY THEMSELVES WITH AMERICAN SUPPORT FOR THEIR VIEWS. UNDER THIS OPTION, THE LANGUAGE OF THE U.S. INSTRUMENT MIGHT BE PATTERNED ON THAT USED FOR THE 1970 EXTRADITION TREATY WITH SPAIN:

"THE TREATY OF EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND SPAIN WAS SIGNED ON MAY 29, 1970, THE TEXT OF WHICH TREATY IS HERETO ANNEXED:

"THE SENATE OF THE UNITED STATES OF AMERICA, BY ITS RESOLUTION OF FEBRUARY 17, 1971, TWO-THIRDS OF THE SENATORS PRESENT CONCURRING THEREIN, GAVE ITS ADVICE AND CONSENT TO RATIFICATION OF THE TREATY;

"NOW THEREFORE..."

THE SENATE RESOLUTION COULD, IF DESIRED, BE GIVEN TO THE GOS SEPARATELY BY DIPLOMATIC NOTE (IT HAS ALREADY BEEN TRANSMITTED TO THE MFA BY LETTER AND, OF COURSE, HAS BEEN EXPLICITLY RECOGNIZED BY THE SPANISH CORTES). SUCH A NOTE NEED NOT, IN OUR VIEW, REQUEST A RESPONSE. SHOULD A RESPONSE BE FORTHCOMING, IT COULD BE EXPECTED TO TRANSMIT THE TEXT OF THE RESOLUTION PASSED BY THE FOREIGN AFFAIRS COMMITTEE OF THE CORTES.

3. THE SECOND OPTION WOULD HAVE THE POTENTIAL ADVANTAGE OF MORE CLEARLY MAKING A MATTER OF FORMAL RECORD, FOR THE EXECUTIVE AND LEGISLATIVE ON BOTH SIDES, THE VIEWS EXPRESSED IN BOTH LEGISLATURES IN GIVING ADVICE AND CONSENT TO RATIFICATION. IT WOULD CONSIST OF ANNEXING TO EACH INSTRUMENT OF RATIFICATION BOTH THE RESPECTIVE PARLIAMENTARY RESOLUTION AND THE TREATY, AND COULD USE ESSENTIALLY THE SAME FORMAT AS OPTION ONE, ADDING THE WORDS "THE TEXT OF WHICH IS ANNEXED" IN THE 2ND PARAGRAPH.

4. IN EITHER CASE, IT WILL PROBABLY BE USEFUL TO ANNEX THE TREATY TO THE INSTRUMENT TO DISTINGUISH CLEARLY BETWEEN THOSE

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PORTIONS OF THE TOTAL AGREEMENT PACKAGE HANDLED AS A TREATY AND THOSE TREATED AS AN EXECUTIVE AGREEMENT. (SINCE THE GOS SUBMITTED THE ENTIRE PACKAGE TO THE CORTES, IT WILL PRODUCE TWO INSTRUMENTS FOR THE KING'S SIGNATURE--ONE FOR DOMESTIC USE AND ANOTHER FOR EXCHANGE WITH US, THE LATTER COVERING ONLY THOSE ELEMENTS HANDLED ON THE U.S. SIDE AS PART OF THE TREATY.)

5. FINALLY, WE WOULD NOTE THAT, EXCEPT FOR THE DECISION ON THE CONTENT OF THE INSTRUMENTS THEMSELVES AND CERTAIN MINOR FORMALITIES, THE WAY IS NOW OPEN TO SPANISH RATIFICATION. CONTRARY TO THE IMPRESSION GIVEN US BY THE FOREIGN MINISTRY ON JULY 24 (PARA 2, REF C), WE HAVE NOW BEEN TOLD THAT, AS FAR AS THE GOVT IS CONCERNED, THE RECEIPT OF A LETTER FROM THE PRESIDENT OF THE CORTES, FORMALLY GIVING NOTICE OF THE FAVORABLE ACTION BY THE FOREIGN AFFAIRS COMMITTEE, WILL OPEN THE WAY TO RATIFICATION. WE UNDERSTAND THIS LETTER WILL BE SUBMITTED WITHOUT WAITING FOR THE TREATY TO BE SUBMITTED TO THE NEXT PLENARY SESSION OF THE CORTES FOR ITS COGNIZANCE. PER REF E, WE ARE PLANNING FOR AN EXCHANGE IN SAN SEBASTIAN TOWARD THE LATTER PART OF AUGUST. STABLER

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